

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	M B Docket No. 03-56
Table of Allotments,)	RM-10662
FM Broadcast Stations.)	
(Victoria and George West, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 12, 2003

Released: March 14, 2003

Comment Date: May 5, 2003

Reply Comment Date: May 20, 2003

By the Assistant Chief, Audio Division:

1. **The** Audio Division has before it a petition for rule making filed by Victoria RadioWorks, Ltd. ("petitioner"), licensee of Station **KEPG(FM)**, Channel 265A, Victoria, Texas, proposing the substitution of Channel 265C3 for Channel 265A at Victoria, and the modification of Station **KEPG(FM)**'s license accordingly. To accommodate the upgrade, petitioner also proposes the deletion of vacant Channel 265A at George West, **Texas**. Petitioner **states** its intention to apply for the channel, if allotted.

2. In support of its proposed deletion of Channel 265A, petitioner states that George West is a community with a 2000 **U.S.** Census population of 2,524 persons. Petitioner presumes that vacant Channels 228C3 and 292A at George West will be made available for auction at some date in the distant future.¹ Petitioner claims that even if all three allotments drew bids, the permittees would have three years to construct. In this regard, the petitioner contends that the remaining two allotments will be adequate to serve a community of 2,539 persons. In the meantime, the public interest would be better served by upgrading Station **KEPG(FM)** to Channel 265C3.

3. In contrast to the delay and uncertainty, Station **KEPG(FM)** would make use of the available spectrum to provide improved service to the public immediately. The upgrade would result in an 87% increase in the area served and a 10% increase in 60 dBu service population, representing an additional 9,226 persons.

4. **We** believe that this proposal warrants Consideration since it would allow **KEPG(FM)** at Victoria, Texas, to expand its service area. Additionally, the deletion of vacant Channel 265A at George West, **Texas**, to accommodate the upgrade would not potentially deprive the community of its sole local

¹ On January 7, 1998, Channel 228C3 was allotted to George West in MM Docket No. 91-283 and is listed on pending Auction No. 37. Additionally, on June 26, 2002, Channel 292A was allotted in MM Docket No. 01-147 and is pending a future auction.

service nor is the channel listed for auction. An engineering analysis has determined that Channel 265C3 can be allotted to Victoria in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.1 miles) southwest at petitioner's presently licensed site.¹ Since Victoria is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. We shall propose to modify Station KEPG(FM)'s license to specify operation on Channel 265C3 in lieu of Channel 265A at Victoria, Texas. In accordance with the provisions of Section 1.420(g)(3) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 265C3 at Victoria, Texas, or require petitioner to provide an equivalent class channel for use by other interested parties.

5. Accordingly, we seek comments on the proposed amendment of the **FM** Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Victoria, Texas	222A, 236C3, 254C1 300C1, 265A	222A, 236C3, 254C1 300C1, 265C3
George West, Texas	228C3, 292A, 265A	228C3, 292A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **May 5, 2003**, and reply comments on or before **May 20, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Harry C. Martin, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(Counsel for Petitioner)

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-

¹ The coordinates for Channel 265C3 at Victoria are 28-46-40 North Latitude and 97-04-10 West Longitude.

delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.³

10. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

³ See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the **FM** Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

3. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

1. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.